

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

PENNY EARLE,

Plaintiff,

vs.

COMMUNITY LOAN SERVICING, LLC f/k/a
BAYVIEW LOAN SERVICING, LLC, M&M
MORTGAGE SERVICES, INC., and JOHN
DOES 1-10,

Defendant.

Case No. 1:21-cv-5816

Judge Robert W. Dow, Jr.

MOTION FOR LEAVE TO FILE AMENDED AFFIRMATIVE DEFENSES,
INSTANTER

Defendant, M&M Mortgage Services, Inc. (“Defendant”), through its attorneys, Justin M. Penn and Louis J. Manetti, Jr., moves pursuant to Rule 15 of the Federal Rules of Civil Procedure for leave to file amended affirmative defenses to assert an additional third affirmative defense. In support thereof, Defendant states as follows:

1. On October 30, 2021, Plaintiff filed this action under the Illinois Consumer Fraud and Deceptive Business Practices Act, common law trespass, the Fair Debt Collection Practices Act, and common law intrusion upon seclusion violations, against Defendants.

2. On January 18, 2022, Defendant filed its original answer and affirmative defenses to the Complaint.

3. Defendant believes it possesses sufficient facts to establish that Plaintiff gave consent to secure the property.

4. Consent is an affirmative defense to an invasion of privacy claim.

5. Rule 15(a) gives the court discretion to allow amendment to assert an affirmative defense, and a court should do so freely when justice so requires. *Chi. v. Loyola Univ. Med. Ctr.*, No. 10 C 6292, 2013 U.S. Dist. LEXIS 14418, at *8-9 (quoting Fed. R. Civ. P. 15(a)).

6. This case is still at the pleading stage, and discovery has not yet closed. Thus, Plaintiff has the ability to explore the merit of this defense and will not be prejudiced if this Court allows Defendant to amend to raise the defense.

7. The answer and defenses otherwise remain unchanged.

WHEREFORE, Defendant, M&M Mortgage Services, Inc. respectfully requests that this Court grant it leave to file the attached proposed answer and amended affirmative defenses to raise the additional defense of consent.

Respectfully submitted,

M&M Mortgage Services, Inc.

By: /s/Louis J. Manetti, Jr.

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CERTIFICATE OF SERVICE

I, an attorney, hereby certify that on May 23, 2022, I caused to be electronically filed Defendant's Motion for Leave to File Answer and Affirmative Defenses, Instantly with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

/s/Louis J. Manetti, Jr.

Louis J. Manetti, Jr.